



ERNIE FLETCHER
GOVERNOR

EXECUTIVE ORDER
2004-1092

September 30, 2004

Secretary of State

Frankfort
Kentucky

RELATING TO TEMPORARY EMERGENCY EXPENDITURES PROVIDING FINANCING FOR THE OPERATIONS, MAINTENANCE, SUPPORT, AND FUNCTIONING OF THE EXECUTIVE BRANCH OF THE GOVERNMENT OF THE COMMONWEALTH OF KENTUCKY AND ITS VARIOUS OFFICERS, CABINETS, DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS, SUBDIVISIONS, AGENCIES, AND OTHER STATE-SUPPORTED ACTIVITIES FOR THE PERIOD BEGINNING OCTOBER 1, 2004, AND ENDING DECEMBER 31, 2004.

WHEREAS, under KRS 48.300, KRS 48.950, and Section 171 of the Kentucky Constitution, the General Assembly is empowered to raise and appropriate revenue and approve and adopt a balanced budget for the operation, maintenance, support, and functioning of the Government of the Commonwealth of Kentucky; and

WHEREAS, the Regular Session of the General Assembly convened on January 6, 2004, and thereafter enacted a budget for the Legislative and Judicial Branches but adjourned sine die on April 13, 2004, without enacting a budget for the Executive Branch for the fiscal year beginning July 1, 2004; and

WHEREAS, the General Assembly still has not enacted a budget for the Executive Branch for the fiscal year beginning July 1, 2004; and

WHEREAS, there is no express comprehensive statutory plan directing how the Commonwealth is to proceed in the event that the General Assembly fails or refuses to enact an Executive Branch budget; and

WHEREAS, the absence of an Executive Branch budget imperils the health, safety, and welfare of the Commonwealth by, *inter alia*:

- (1) putting at risk billions of federal fund dollars, the receipt of which is conditioned upon the availability of state matching funds;
- (2) curtailing the economic prosperity and growth potential of the Commonwealth, and potential employment opportunities for Kentuckians;
- (3) endangering the land, water, and air resources of the Commonwealth;
- (4) imperiling state emergency and disaster response systems, including local 911 operators;
- (5) disrupting operations of a myriad of facilities including but not limited to prisons, schools, mental hospitals, children's homes, and veterans' nursing home facilities;
- (6) obstructing the revenue collection processes of state and local governments;
- (7) jeopardizing the bond rating of the Commonwealth;
- (8) impeding timely payments from the State Treasury for goods received and services performed that are necessary for the day-to-day operations and maintenance of the programs and facilities of the Commonwealth; and
- (9) endangering the continuity and availability of services to all citizens of the Commonwealth; and

WHEREAS, pursuant to Sections 69 and 81 of the Kentucky Constitution, the supreme executive power of the Commonwealth is vested in the Governor and the Governor is explicitly empowered and mandated to "take care that the laws be faithfully executed"; and

WHEREAS, the expenditure of public funds is necessary in order for the Governor to fulfill his constitutionally mandated duty to faithfully execute the laws of the Commonwealth as its Chief Magistrate; and

WHEREAS, because the General Assembly still has failed to carry out its duty to enact an Executive Branch budget for the fiscal year beginning July 1, 2004, the Commonwealth remains confronted with an emergency requiring action by the Executive Branch to continue the operation of the government of the Commonwealth, including providing financing from available revenue for the continued operation of government; and

WHEREAS, the state budgeting and accounting system is predicated upon a system of quarterly allotments of funds to be expended in the manner authorized in this Executive Order; and

WHEREAS, this temporary plan shall remain in effect only until such time as the General Assembly enacts a biennial budget and appropriations bill which may occur as early as the second quarter of fiscal year 2005 which ends December 31, 2004;

NOW, THEREFORE, I, ERNIE FLETCHER, Governor of the Commonwealth of Kentucky, by virtue of authority vested in me by the Kentucky Constitution and in particular Sections 69 and 81, and as further vested in me by the laws of the Commonwealth, do hereby FIND, DECLARE, ORDER, AND DIRECT the following:

1. That a state of emergency continues to exist in the Commonwealth due to the failure of the General Assembly to enact a budget for the Executive Branch for the fiscal period beginning July 1, 2004, and ending June 30, 2005.
2. The declared emergency continues to pose a direct and serious imminent risk of harm to the preservation of order, the administration of justice, and

the protection of the public health and property, all of which are fundamental purposes of government.

3. The sound and orderly management of the people's business mandates that any disruption of services due to the failure of the General Assembly to enact an Executive Branch budget should be minimized, and that state services must therefore continue to be provided on a predictable, regular, and established schedule.
4. These services should and must be provided to the extent possible within the reasonable boundaries of anticipated revenues which, for the fiscal year beginning July 1, 2004, and ending June 30, 2005, have been forecasted pursuant to statutorily recognized estimating procedures.
5. Through its adoption of House Bill 396, the General Assembly has made appropriations for the use of the Judicial Branch totaling \$234,648,400, and in House Bill 397 for the Legislative Branch totaling \$40,731,400, leaving \$20,739,752,600 in previously estimated revenues identified for use by the Executive Branch, as modified by the Consensus Forecasting Group estimates of June 8, 2004, for the operation and function of the Executive Branch of government.
6. The authority of the Governor, pursuant to Sections 69 and 81 of the Kentucky Constitution, to cause the expenditure from the State Treasury of such available funds as may be necessary for the operation of government and the execution of the laws of the Commonwealth by the Executive Branch is hereby reaffirmed. Accordingly, the Secretary of the Finance and Administration Cabinet is hereby authorized to issue warrants for the payment of all claims as may be made by the Executive Branch of government in accordance with the Public Services Continuation Plan outlined in Attachment A and incorporated herein by reference, taking into

consideration the available financial resources and the competing financial obligations of the Commonwealth.

7. Executive Branch agencies are hereby directed to operate beginning October 1, 2004, within the monetary parameters set forth in Attachment A and incorporated herein by reference.
8. Pursuant to this Order and in accordance with KRS 48.400 *et seq.*, the Secretary of the Finance and Administration Cabinet shall also have the authority, after consultation with the State Budget Director, to make adjustments to the First and Second Quarter Spending Authorizations as provided in Attachment A, including the authority to move funds from one account to another, as may be necessary to protect the financial interests of the Commonwealth.
9. Pursuant to Order of the Franklin Circuit Court dated July 15, 2004, no funds shall be spent for new programs or capital projects not authorized by the General Assembly, nor shall funds be expended in excess of the appropriation made by the General Assembly for the Executive Branch for Fiscal Year 2004.
10. In addition to the monthly reports as to the financial condition of the state and its budget units required by KRS 48.400, the Secretary of the Finance and Administration Cabinet shall make monthly reports to the Governor, the Chief Justice, and the Legislative Research Commission on all expenditures authorized pursuant to this Order.
11. Unless otherwise directed by the issuance of a subsequent Executive Order, all state personnel normally scheduled for duty shall continue to report for service at their usual duty station at their regularly scheduled hours pursuant to state law.

12. All state agencies and department heads are hereby authorized to perform such lawful acts as may be undertaken to implement the provisions of this Order.
13. The provisions of this Order shall remain in full force and effect until December 31, 2004, unless sooner rescinded or superseded by subsequent Executive Order or by legislative enactment of a budget.
14. **This Order shall become effective immediately upon filing with the Secretary of State.**



The image shows the signature of Benie Fletcher in blue ink. Below the signature, the text "BENIE FLETCHER" and "Governor" is printed.